

In addition to spelling corrections, minor tweaks for sentences, there were comments made that were poised in the form of a question. This attempts to address those questions.

Permit comments:

1. Question on I.A. Geographic Coverage, and whether it is accurate to clarify “discharging to waters of this state.” It is consistent with our other General Permits.

2. Part I.C.5 Wording “impaired waters” was added with the comment “Not required, but recommend adding this to emphasize that this is only for impaired waters.” Change accepted.

3. Part I.E.3.b Comment on pavement wash waters “See EPA MSGP Part 1.1.3.1 for more comprehensive language for this bullet”. We looked at the suggestion and added the expanded language from the MSGP.

4. Part I.E.4 This allows restoration activities to be required by this permit as an overlay to an individual or other permit. Question “Confused as to why a facility that has permit coverage already, either individual or general permit, would/should need/want coverage under this permit as well?” Answer; This allows restoration required under the WIP to be required and performed under this permit when the rest of their requirements may be under the separate permit. This is a solution in limited cases to address Chesapeake Bay and local TMDL.

Part I.G Alternative Permit Coverage. “The sentence before this says the Department MAY terminate coverage, not that it definitely will. This highlighted sentence seems to indicate that termination will be automatic, not discretionary. Recommend clarifying.” This language is based on language in the EPA MSGP. Missing though was the phrase “EPA may grant additional time to submit the application or NOI if you request it.” And “EPA may take appropriate enforcement action for any unpermitted discharge.” Similar clarification language has been added, and then the language may terminate is changed to WILL terminate.

Part I.G.1 Alternative Permit Coverage suggests that “If the Department determines that a discharge may cause water quality standards to be exceeded in the receiving water, then the Department may require you to take additional actions.” The EPA asks “Is there a state regulation that can be referenced here? If so, recommend adding it.” This condition is similar to EPA MSGP 1.1.6.1. “EPA may authorize your coverage under this permit after you implement additional control measures so that your discharges will meet water quality standards.” There isn’t a specific regulation here, there is just the reality that although the Department may be requesting additional controls or actions, but ultimately if those fail an individual permit may be justified. This is one of two places in both permits, where the permittee is put on notice that if they are exceeding water quality standards, they may be required to apply for an individual permit. The EPA MSGP language was used as it was clearer as to what actions are required for coverage in the case where water quality standards may be exceeded.

Commented [OE1]: Legal concern as to whether it is allowable to have a facility with general permit coverage but only be responsible to comply with the restoration req’t.

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Commented [OE2]: Recommended edit for Part I.G.1: You must meet applicable water quality standards. You are ineligible for coverage under this permit if the Department determines prior to your authorization to discharge that your discharges will not meet an applicable water quality standard. In such case, the Department may notify you that an individual permit application is necessary, or, may require you to implement additional control measures so that your discharges will meet water quality standards; once you have implemented those additional control measures, the Department may authorize your coverage under this permit.

Part I.G.2. This references certain General Permits. EPA asks “Does that mean in addition to this permit or instead of this permit? Recommend clarifying that point.” After reviewing Part I.G.2, the section was simplified and made clearer.

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Part I.H. Continuation of an Expired General Permit and Permit Coverage. “Pursuant to 40 CFR 122.6(d), and as authorized by [insert citation to state law], if the Department does not reissue this general permit prior to the expiration date (insert date), it will” Note that the date is included on the front of the permit, and if we need to include the date within the permit, then we refer to it either as the Effective Date etc, we don’t include the specific date at multiple points within the permit as that creates a greater chance to include errors. The language as accepted by EPA for the construction has been duplicated in this permit. The references to CFR would be appropriate in the fact sheet, but even the EPA’s MSGP doesn’t use this type of language. The language was compared with the 20CP and updated if there was a difference.

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Commented [OE3]: Ok. Language in both MSGP and CGP are identical.

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Part I.I. Duty to Reapply. “Should be included with the Standard Conditions in Part VI.” We chose to keep it with the section on how to obtain coverage.

“Suggest using consistent language throughout the permit – “reissued” vs “renewed” vs “new”.” Note that these are different situations. When a permit is modified, as we intend to do with this one, that will be reissued, whereas at the end of 5 years, it will be renewed. In the case of New, it has been modified not to indicate under the renewed, not new permit.

Commented [OE4]: Legal concern with whether these interpretations are consistent with regulations. Recommend that the MSGP include definitions for each of these terms so that it is clear to the permittees that obtain coverage.

EPA suggests inserting “This requirement applies regardless of whether you have submitted a Continuation of Registration statement under the previous general permit.” That is not found in the 20-CP and is redundant with other requirements in the permit about operating without a permit. No change made.

Commented [OE5]: EPA further reiterates the need for this sentence for clarity as we have had instances in other states of confusion over which permit is effective.

Commented [OE6]: Legal concern with this section conflicting with Part VI.Q.

Commented [OE7]: Legal concern as to whether this is allowable and/or consistent with regulations.

Part I.J. The Reopener EPA comments “Recommend discussing this. The permit could be modified for any reason, not just limited to these. Also not limited to 3 years unless there is some state law that places a limit on it.” The point of this language is to specifically limit what the permit is re-opened for. The provides full transparency with the intention of the Department. This isn’t a state law. This is an acknowledgement that the Department is issuing the permit prior to the MSGP being issued and surviving challenges on these aspects.

Commented [OE8]: EPA recommends leaving in the general reopener language in Part VI.Q and explaining in the fact sheet the intent to potentially reopen when the EPA MSGP is reissued.

SWPPP being required under III.C and III.A.2, EPA asks if III.A.2 “Check citation. Should this be Part II A.1.3.b?” Actually this citation is correct, this is the requirement to document restoration requirements in the SWPPP.

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Relating the Part II.A.1.a. the NOI requirements, we require Specify the MS4 jurisdiction you operate in. the EPA asks “The facility might not drain to an MS4, so is this definitely relevant for all permittees? Is it trying to ascertain which county the facility is located in? If so, perhaps just ask which county.” This is to identify if restoration is required, and regardless if it drains to the ms4 system, or is just operating within the MS4, Maryland wants the operator to be aware and the MS4 to be aware of the potential discharges.

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Relating to Part II.A.1.b...the transfer of ownership requirements. EPA asks about the language "may be transferred" "A bit confusing to say "may be", especially with the last bullet here. If neither the current nor new permittee receives notification of intent to terminate, will the termination be deemed to have occurred as of that date? Does the Department confirm/accept termination in writing? Seems that would be clearer for all involved." This language says that if the Department takes an action terminate the coverage for whatever reason, then the authorization may not be transferred. No change.

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Relating to Part II.A.2. the permit fee. Several questions about how 30 days is counted. Changes were made to be more specific.

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Relating to Part II.B Deadlines for Coverage the phrase "Authorization to discharge under 12-SW continues in the interim." Was deleted. This provides the permittee both the assurance they have coverage, and that they understand which version of permit they are abiding by while they wait their authorization under the new permit. This is identical to what EPA does on the MSGP "Provided you submit your NOI in accordance with the deadline, your authorization under the 2015 MSGP is automatically continued until you have been granted coverage under this permit or an alternative permit, or coverage is otherwise terminated."

Related to Part II.B Deadlines, the facilities with restoration include "Within 6 months after the effective date of this permit. Authorization to discharge under 12-SW continues in the interim." EPA requests "Why so much extra time allowed for these dischargers?" We provide 6 months for restoration since the requirements require engineering resources to evaluate and develop plans, and this was the time found acceptable in the past.

Commented [OE9]: The Table does not include a category for New permittees subject to restoration requirements. Recommend adding this.

Also, why do existing permittees that are subject to restoration require 6 months to submit an NOI? #1 They should have completed the restoration during the previous permit term and be subject to a compliance order and/or #2 if they did not implement their previous plan, they should already have the plan from the prior permit and not require an additional 6 months to complete the NOI process.

Be sure to compare table and deadlines with MSGP.

Part II.D failure to notify..the EPA asks if the permit type can be a GP or IP, and that is true.

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Part II.E Additional notification, the edit and comment by EPA is to change you must contact the MS4, to the owner/operator of the MS4. We disagree, the obligation is to notify the MS4, the actual entity. No change. Similar comment is made on the next portion of the sentence suggesting deleting "What does this mean? Would there be an MS4 without an NPDES permit? Recommend deleting this language." What it suggested was that they may be unregulated municipal separate storm sewers in areas where the density doesn't justify a permit. In those cases you wouldn't notify them. However per the comment is clearer just to remove that language. In this case we deleted that part of the sentence.

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Commented [OE10]: An MS4 is a system of pipes, the owner/operator of the MS4 is the permittee that should be notified. That was EPA's rationale for the edit.

Part II.F The question is raised about whether changes in discharge can be submitted through an eNOI system. At this time there is none, so that language still requires submission through the mail. Perhaps prior to going final, we have confirmed that we will have an eNOI. If that is the case language like this can be updated. No change.

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Part II.F.2 The question is raised as to whether it is possible to include other cases when permit coverage could be terminated. "Recommend also discussing other ways that a permit could terminate (i.e. coverage under a different permit or failure to submit an NOI before deadline)" This section is about changes in operation where the permittee is going to request a termination, and how they accomplish

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that. Other cases where there is termination for cause is addressed by a Standard Term and Condition. No change.

Part II.G Requirements for posting a sign, EPA asks about "viable", "What does that mean?" This was taken from EPA's MSGP. In this context means "capable of working successfully; feasible" no change

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For the signage, we included the URL for our permits portal. "Does this URL contain the SWPPP info? Should the URL for the SWPPP be included here as well?" Answer: the SWPPP is a living document that is maintained by the permittee. The only SWPPP that is with the Department would be the initial one submitted as part of their NOI, and we wouldn't propose posting out of date documents.

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"Recommend also including a contact number for MDE and/or a contact number to report a pollution event and/or public concerns." There is a phone number listed on our website. Since it may change, we will rely on that until we have a better solution.

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Commented [OE11]: If MDE has a general compliant hotline number, why not just include that? The number probably doesn't change that often.

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Part III.A On the 5 acres in size, the EPA asks "Does this include the entire facility footprint or only the regulated area where industrial activity occurs?" From our definitions section, we define facility as "NPDES "point source" (including land or appurtenances thereto) that is subject to regulation under the NPDES program. See 40 CFR 122.2." This is the strict definition in the federal regulations, that are subject to our regulation.

Commented [OE12]: Recommend clarifying in the permit which part of the facility (just the regulated portion or the entire facility) this section applies to, since the acreage is one of the criteria for being subject to the restoration req't.

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The EPA asks "How does restoration activity that was completed during this past permit play into determining the baseline? Also, what about facilities that did not exist on January 1, 2006; what baseline should they use?" "Why 2002 here, when 2006 was used above?" The baseline for restoration was set when the model was initially established, which is this 2006 date. The other date in the permit is when certain stormwater treatment requirements were mandated by Maryland state law, which is the 2002 date.

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Commented [OE13]: Recommend that this information be included in the fact sheet

"So, if a permittee completed the 20% restoration required by the last permit, they have to do NOTHING this permit term? And if they did nothing to comply with the previous permit, this permit is granting them additional time to address their noncompliance? Is there an enforcement component that goes along with this?" That is how the WIP is written. This is a requirement to increase treatment in a very restricted area. Requirements for the MS4 are slightly different in that they are dealing with an entire county or jurisdiction. For these industrial sites there is no additional requirement by this permit, but if they do decide to increase treatment it can be a marketable credit.

Commented [OE14]: No response provided to this question.

Commented [OE15]: Recommend including more detailed guidance for sites that fall into the category of those that already met the 20% last permit term. The permit could specify that ongoing BMPs like street sweeping be continued, and/or that permittees should contact the state if a BMP is no longer functional or has been removed.

What about the permittees currently in the enforcement process? The permit should include a req't about continuing to work towards compliance by the dates set in the enforcement mechanism.

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"Why is this referring to Model Phase 5.3? I don't know that it is maintained anymore. We're on Phase 6 now, and the reduction efficiencies for many BMPs have changed significantly." We have modified this to say or later revision. However if restoration was performed based on 5.3 it is still considered as completed under this permit.

Commented [OE16]: Legal concern with this section. Seems to imply that both the previous permit terms/conditions apply in this permit and that the deadline can be carried over to the subsequent permit. Need to discuss recommended edits.

"What does this mean? Is this language inferring that the previous permit is still applicable somehow?" What this means is that if you didn't complete the restoration. You are not relieved of the responsibility. Compliance will consider that as a violation.

Under Part III.B. "Recommend adding in the following practices and/or language to this section consistent with EPA MSGP Part 2.1.2.2: Keep all dumpster lids closed when not in use. For dumpsters and roll off boxes that do not have lids and could leak, ensure that discharges have a control (e.g., secondary containment, treatment). Consistent with Part 1.2.2 above, this permit does not authorize dry weather discharges from dumpsters or roll off boxes.* Minimize the potential for waste, garbage and floatable debris to be discharged by keeping exposed areas free of such materials, or by intercepting them before they are discharged. Note: Plastic Materials Requirements: Facilities that handle pre-production plastic must implement best management practices to eliminate discharges of plastic in stormwater. Examples of plastic material required to be addressed as stormwater pollutants include plastic resin pellets, powders, flakes, additives, regrind, scrap, waste and recycling." Note that the floatable debris language is already incorporated later in this part, however the inclusion of language regarding leaking dumpsters was added.

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"Recommend adding in the following practices and/or language to this section consistent with EPA MSGP Part 2.1.2.3: Inspecting and maintaining baghouses at least quarterly to prevent the escape of dust from the system and immediately removing any accumulated dust at the base of the exterior baghouse. Cleaning catch basins when the depth of debris reaches two-thirds (2/3) of the sump depth and keeping the debris surface at least six inches below the lowest outlet pipe.*" This one is curious as baghouse filter practices are included in the industry specific controls in our permit in Appendix D. The catch basin maintenance item was added.

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"Recommend also including maintenance deadlines. See EPA MSGP Part 2.1.2.3" The deadlines in the proposed permit of 14 days, and if not feasible 45 days, appear arbitrary. The bottom line for MDE's permit is that they need to achieve benchmarks or visual monitoring and maintenance is part of how that is achieved. We did not add these additional deadlines.

Commented [OE17]: Recommend adding rationale for the deadlines that were selected in the fact sheet.

"Recommend also including an overview of what is in the SWPPP; the location of all the controls required by this permit, and how they are to be maintained to the training list." Agreed, these additions from the MSGP are worth adding.

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"Does training have to be reported? Topics covered, list of attendees, etc." Yes, Part III.C.8 requires training activities are to be documented and retained.

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Related to an evaluation of all non-stormwater related discharges, EPA asks "How often is this evaluation required to be performed?" This is performed once when they initially get coverage. After that the permit conditions provide clear language as to what discharges are authorized.

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Part V.A.1 "Recommend including details similar to Part V.A.2.a below for this type of inspection as well." In the quarterly inspection, we have intentionally left this up to the permittee to consider and address.

Commented [OE18]: None of the comments in Part IV were included in this document

Part V.A.2.a "Recommend including inspection of BMPs/control measures as part of the evaluation to this list." This was done.

Commented [OE19]: Why leave inspection req'ts to the permittee? For consistency and to ensure that inspections are conducted properly, there should be some guidance included in this section.

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Part V.A.3.a regarding the visual sample results, EPA asks “How is this reported to MDE?”. It isn’t submitted, however it is kept on-site consistent with EPA MSGP approach. The results are to be evaluated during the comprehensive site evaluation. Both records are available to an inspector when they visit the site.

Commented [OE20]: Recommend that this information be added to the permit. See edit below.

Regarding the inactive and unstaffed certification EPA suggests “Consistent with Part V.B.3.b.ii, permittees must indicate in a “Change NOI” form that the facility has materials or activities exposed to stormwater or has become active and/or staffed. Recommend referencing that here.” That was added.

The Quarterly Visual Monitoring Form found in Appendix B of this permit must be completed for each sample, evaluated during the comprehensive site evaluation, and be kept with the SWPPP so as to be available to an inspector as necessary.

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Related to our Standard Terms and Conditions, EPA requests “Check to ensure that all applicable conditions in 40 CFR 122.41 are included in this section.” The conditions are either in this section, or in other parts of the permit. In addition to EPA’s standard terms and conditions, there are a number of Maryland ones added.

Commented [OE21]: EPA recommends that all standard conditions be located in the same section.

Appendix A

Related to SIC: “2874 is subject to a numeric ELG. Is that activity eligible to apply for this permit? If not, it should not be included in this list”. “3241 is subject to a numeric ELG. Is that activity eligible to apply for this permit? If not, it should not be included in this list.” Based on the questions, the table in the permit was expanded to specifically call out under that SIC Code, the permit cannot provide coverage for.

Commented [OE22]: What table is this referring to? Part I.G.2.a?

Related to transportation “There is no description for these asterisks. Do they signify something?” Look down to the row in the table with the asterisk.

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Related to the statement (except 4221-4226) “What is the rationale for this exception?” This is straight out of 40CFR, and you will notice this in EPA MSGP as well. Warehousing is notched out here and then included later in the table separately.

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Related to the statement (except 4493) “What is the rationale for this exception? The marinas have their own permit and are not covered under this one.”

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Commented [OE23]: Can this be noted somewhere in the table?

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Related to Sector AD for Department of Public Works facilities “How does the Dept identify these facilities? How often is an exercise performed to determine whether new facilities need to be added to this list? This comment applies to AD.b and AD.d also.” These facilities were included when we transitioned from 02SW to 12SW, as the Department had no clear distinction prior to that which would justify by SIC code or reference in 40CFR to include them. Thus MS4’s can opt in, actually are encouraged to opt in, and include coverage of these industrial activities under this permit. EPA had actually encouraged this at previous training sessions where MS4s were included. Just as any Sector AD, this isn’t categorical but requires the operation to be notified by the Department they are eligible.

Commented [OE24]: Does MDE periodically check whether additional facilities require this coverage so that they can be notified?

Appendix B

No comment received.

Appendix C

Related to the reference to hardness default of 100mg/L, "What is the purpose of this sentence?" Similar to Maryland regulations, the limits for hardness dependent metals defaults to 100 mg/L, and it is noted that the limit may be changed based on the receiving water hardness for a site specific limit.

Appendix D

Related to hardness dependent benchmarks EPA asks "What was the assumed hardness that resulted in this value? It should be noted here." "Same comment as above. This comment applies to other metals as well throughout this document." The footnote on the table refers the permittee to Appendix C, which is where hardness dependency is discussed.

Commented [OE25]: Did MDE use the default of 100 mg/l to come up with the benchmark values in the appendix?

Sector B regarding lack of benchmarks here; "This is not consistent with the EPA MSGP. What is the rationale for not including the COD benchmark here? Please provide explanation in the FS." Good catch. This is now included.

Sector C "What about the other subsectors and associated benchmarks found in the EPA MSGP? Why are they not included here?" Good catch, these are now included.

Appendix E

Question about definition of restoration, which includes reference to 2011 guidance or replacement. EPA "This document was updated in Dec 2019. Please update this definition and the link." Although the model has resulted in slight changes, any restoration completed or any design performed using the 2011, would still be valid. Thus we allow use of any of the guidance. This may be different for MS4 permits, where the loads for TP and TSS are considered, the industrial uses TN as a surrogate and continues to use the 5.4 pounds of TN derived from the previous model, to be consistent across all industrial activities. When trading is considered though, the trading policy specifies the TN, TP and TSS for each untreated acre.

Commented [OE26]: Recommend adding the link for the updated document as well.

For New Source, EPA "See EPA MSGP for a more comprehensive definition." Update definition was adopted.

For Operator, EPA "Why are there two definitions for the same term?" The more generic version was deleted in preference for the term consistent with the EPA MSGP and federal regs.

Appendix F

No Edits or comments.

Appendix G

EPA provided edits that were accepted. In additions there were several comments and questions.

Regarding the references to regulation EPA "What regulation is this referencing?" It is referencing COMAR in the title of that section. This specific reference is now copied into that sentence to reduce confusion.

Regarding the terms of the permit EPA "Is this separate from the trading contract? Or is this one aspect of the contract? Are the contents of the contract listed somewhere that can be referenced here?" No, the contents of any contract would be unique to the entities, and a template one has not been created or required.

Regarding the requirement that if deficiencies exist and resulting corrective measures are needed, you must immediately implement them or jeopardize your trade. EPA "I would think this would completely invalidate the trade"

Commented [OE27]: No response to this comment provided

The permit references a trade contract. EPA "Where does it discuss that a contract is required?" A contract is the mechanism wherein the parties agree to the terms.

Commented [OE28]: Recommend the Appendix reference the section of the permit where this is located.

The permit references a form. "Is this a specific form? Recommend using the proper name here so that permittees know what it is and where to find it." The trading program is currently evolving and the exact form may change over the next 5 years as may the website. We are using the language from the regulation and we will help people find it if required.